

## HOUSE BILL NO. 370

INTRODUCED BY K. PETERSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING EXECUTIVE BRANCH OFFICERS AND EXECUTIVE BRANCH EMPLOYEES FROM LOBBYING THE LEGISLATURE; PROVIDING AN EXCEPTION FOR WRITTEN OR ORAL TESTIMONY BEFORE A COMMITTEE CONCERNING A BILL INTRODUCED AT THE REQUEST OF THE EMPLOYING AGENCY OR WHEN REQUESTED BY A LEGISLATOR; PROVIDING PENALTIES FOR A VIOLATION OF LEGISLATIVE LOBBYING BY AN EXECUTIVE BRANCH OFFICER OR EXECUTIVE BRANCH EMPLOYEE; AND AMENDING SECTIONS 5-7-102 AND 5-7-103, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 5-7-102, MCA, is amended to read:

**"5-7-102. Definitions.** The following definitions apply in this chapter:

(1) "Business" means:

(a) a holding or interest whose fair market value is greater than \$1,000, in a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, self-employed person, holding company, joint-stock company, receivership, trust, or other entity or property held in anticipation of profit, but does not include nonprofit organizations; and

(b) present or past employment from which benefits, including retirement allowances, are received.

(2) "Commissioner" means the commissioner of political practices.

(3) "Docket" means the register of lobbyists and principals maintained by the commissioner pursuant to 5-7-201.

(4) "Elected official" means a public official holding a state office filled by a statewide vote of all the electors of Montana or a state district office, including but not limited to legislators, public service commissioners, and district court judges. The term "official-elect" also applies to the offices.

(5) "Individual" means a human being.

(6) "Lobbying" means:

(a) the practice of promoting or opposing the introduction or enactment of legislation before the legislature or the members of the legislature by a person other than a member of the legislature or a public

1 ~~official~~; and

2 (b) the practice of promoting or opposing official action by any public official.

3 (7) "Lobbying for hire" includes activities of the officers, agents, attorneys, or employees of a  
4 principal who are paid, reimbursed, or retained by the principal and whose duties include lobbying. If an  
5 individual is reimbursed only for ~~his~~ the individual's personal living and travel expenses, which together  
6 are less than \$1,000 per calendar year, that individual is not considered to be lobbying for hire.

7 (8) (a) "Lobbyist" means a person who engages in the practice of lobbying for hire.

8 (b) Lobbyist does not include:

9 (i) an individual acting solely on ~~his~~ the individual's own behalf; or

10 (ii) an individual working for the same principal as a licensed lobbyist if the individual does not have  
11 personal contact involving lobbying with a public official on behalf of ~~his~~ the individual's principal.

12 (c) ~~Nothing in this~~ This section deprives does not deprive an individual who is not lobbying for hire  
13 of the constitutional right to communicate with public officials.

14 (9) "Payment" means distribution, transfer, loan, advance, deposit, gift, or other rendering made  
15 or to be made of money, property, or anything of value.

16 (10) "Payment to influence official action" means any of the following types of payment:

17 (a) direct or indirect payment to a lobbyist by a principal, such as salary, fee, compensation, or  
18 reimbursement for expenses, excluding personal living expenses; or

19 (b) payment in support of or assistance to a lobbyist or a lobbying activity, including but not  
20 limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist.

21 (11) "Person" means an individual, corporation, association, firm, partnership, state or local  
22 government or subdivision of state or local government, or other organization or group of persons.

23 (12) "Principal" means a person who employs a lobbyist.

24 (13) "Public official" means an individual, elected or appointed, acting in ~~his~~ an official capacity  
25 for the state government. The term does not include those acting in a judicial or quasi-judicial capacity or  
26 performing ministerial acts.

27 (14) "Unprofessional conduct" means:

28 (a) violating any of the provisions of this chapter;

29 (b) instigating action by a public official for the purpose of obtaining employment;

30 (c) attempting to influence the action of a public official on a measure pending or to be proposed

1 by:

2 (i) promising financial support; or

3 (ii) making public any unsubstantiated charges of improper conduct on the part of a lobbyist, a  
4 principal, or a legislator; or

5 (d) attempting to knowingly deceive a public official with regard to the pertinent facts of an official  
6 matter or attempting to knowingly misrepresent pertinent facts of an official matter to a public official."

7

8 **Section 2.** Section 5-7-103, MCA, is amended to read:

9 **"5-7-103. Licenses -- fees -- eligibility -- waiver.** (1) ~~Any~~ Subject to [section 3], any adult of good  
10 moral character who is otherwise qualified under this chapter may be licensed as a lobbyist. The  
11 commissioner shall provide a license application form. The application form may be obtained from and must  
12 be filed in the office of the commissioner. Upon approval of the application and receipt of the license fee  
13 by the commissioner, a license must be issued that entitles the licensee to practice lobbying on behalf of  
14 one or more enumerated principals. The license fee is \$50 for each lobbyist. Each license expires on  
15 December 31 of each even-numbered year or may be terminated at the request of the lobbyist. A lobbyist  
16 who believes that payment of the license fee may constitute a hardship may apply to the commissioner  
17 for a waiver of the fee required by this section. The commissioner may waive the license fee upon proof  
18 by the lobbyist that payment of the fee constitutes a hardship.

19 (2) (a) Except as provided in subsection (2)(b), an application may not be disapproved without  
20 affording the applicant a hearing. The hearing must be held and the decision entered within 10 days of the  
21 date of the filing of the application.

22 (b) An application may not be approved if a principal has failed to file reports required under  
23 5-7-208.

24 (3) The fines and license fees collected under this chapter must be deposited in the state treasury.

25 (4) The commissioner may adopt rules to implement the waiver provisions of subsection (1)."

26

27 **NEW SECTION.** **Section 3. State officer and state employee -- legislative lobbying prohibited.** (1)  
28 A state officer or state employee may not engage in legislative lobbying.

29 (2) A state officer or state employee may not use state time, equipment, supplies, or facilities for  
30 the purposes of lobbying the legislature.

(3) Subsections (1) and (2) do not apply to:

(a) lobbying for hire when specifically required by state or federal law;

(b) a state officer or state employee who engages in lobbying on the employee's own behalf or on behalf of a government entity while in a leave status as authorized by law; or

(c) written or oral testimony given before a committee of the legislature:

(i) concerning a bill introduced at the request of the agency employing the state officer or state employee; or

(ii) at the request of a member or committee of the legislature.

(4) A state officer or state employee who violates subsection (1) or (2) is subject to disciplinary action by the employing state agency, including verbal or written reprimand, reduction in position or pay, dismissal from employment, or any combination of the sanctions in this subsection.

**NEW SECTION. Section 4. Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 5, chapter 7, part 3, and the provisions of Title 5, chapter 7, part 3, apply to [section 3].

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